

**OIG RESPONSES TO FREEDOM OF INFORMATION ACT
AND PRIVACY ACT REQUESTS**

MATERIAL TRANSMITTED

OIG PROCEDURE 502

OIG RESPONSES TO FREEDOM
OF INFORMATION ACT AND
PRIVACY ACT REQUESTS

This document establishes the procedures for handling Office of Inspector General (OIG) Freedom of Information Act (FOIA) and Privacy Act requests, and is intended to supplement the U.S. Environmental Protection Agency's (EPA's) FOIA and Privacy Act regulations.

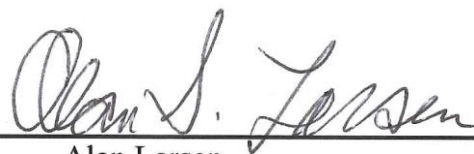
These procedures implement OIG Policy 502, dated 04/21/2016, and are applicable to all OIG employees.

This procedure is being revised to:

- Incorporate various changes in the process for handling FOIA and Privacy Act requests for OIG information.
- Replace references to FOIAXpress with FOIAonline.
- Make OIG procedures conform with updates in the EPA's September 2014 FOIA policy.
- Enhance the manner in which responsive material is produced, reviewed and released.
- Clarify roles for all OIG employees.
- Clarify delegation procedures for OIG officials responsible for signing initial determination letters after a determination is made that the employee's position is equivalent to the director level.

FILING INSTRUCTIONS

Replace Procedure 502, *Freedom of Information Act, Privacy Act, Congressional and News Media Requests for Documents*, dated October 14, 2011.



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SECTION 1. INTRODUCTION

- 1.1 In the interest of promoting government transparency and accountability, the Office of Inspector General (OIG) will disclose, to the fullest extent possible, its records that are responsive to a request consistent with the Freedom of Information Act (FOIA), as amended; the Privacy Act of 1974 (Privacy Act), as amended; and with other applicable federal laws and policies. In addition, the OIG will work proactively to post information online in advance of any public request when feasible. A full policy statement, background, and authorities and references are contained in OIG Policy 502.

SECTION 2. ROLES AND RESPONSIBILITIES

- 2.1 OIG FOIA OFFICER. The OIG FOIA Officer provides the first line of response for all disclosure issues involving FOIA, the Privacy Act, or other disclosure issues. The OIG FOIA Officer also is responsible for responding to Privacy Act requests sent to the OIG. Many of the OIG FOIA Officer's responsibilities are similar to the responsibilities of a U.S. Environmental Protection Agency (EPA) headquarters FOIA Coordinator, or an EPA Regional FOIA Officer. However, the OIG FOIA Officer does not work under the general direction of the Agency FOIA Officer. The OIG FOIA Officer will:

- a. Receive all requests for disclosure sent directly to the OIG or forwarded to the OIG by the EPA or any other agency. The OIG FOIA Officer is responsible for monitoring typical avenues for incoming requests, including regular mail, email, and FOIAonline.

If OIG receives a FOIA request outside of the FOIAonline system, the OIG FOIA Officer forwards the request to the Agency FOIA Office for entry into the system. If the request has been misdirected to OIG, or is directed to both the OIG and to an agency component, the request will be sent to the Agency FOIA Office for assignment and tasking.

- b. Review the FOIA request and verify the request:
 - Is in writing.
 - Provides a mailing address (or other contact information).
 - Asks for EPA OIG records.
 - Reasonably describes the records sought.
- c. Contact the requester directly if the records sought are not reasonably described, the scope appears unduly burdensome, or the request needs clarification.
- d. Confirm in writing with the requester, any modification to the request.

If the requester provided an email address, FOIAonline automatically sends the requester a receipt that includes the tracking number and submission date. If the requester did not include an email address, the OIG FOIA Officer will mail a letter with the tracking number, submission date, and contact information to the requester.

- e. Contact the requester to obtain a Privacy Act certification form, if the requester is seeking first-person information under the Privacy Act.
- f. Provide any necessary information for estimating processing fees, when requested by the Agency FOIA Office. The Agency FOIA Office makes the determinations for processing fee waivers and expedited processing requests.
- g. Determine which offices in the OIG are likely to have records responsive to the request. Route the request to each OIG component office that may have responsive records and allow each OIG component office five (5) working days to search for and provide responsive documents in electronic form, unless impracticable. Monitor the quality of the responses. Provide guidance to OIG component personnel regarding the scope of the request and cutoff date for records, and follow up on overdue responses.
- h. Track the timeliness of OIG component offices' responses to FOIA requests. Notify the requestor in writing if a record cannot be obtained readily and provide a projected date or timeframe the OIG expects to send a response. Seek and obtain any necessary extensions of time.
- i. Collect and review records provided by responding OIG component offices.
- j. Process or provide FOIA requests to the Deputy Counsel, who will assign the request within Office of Counsel (OC) for processing.
- k. Consult or refer records, as necessary, with other federal agencies; or consult or reassign records originating from the agency to the EPA.
- l. Consult, as necessary, with OIG attorneys, agency FOIA officials, and/or the U.S. Department of Justice (DOJ).
- m. Process a FOIA and determine which records (or portions thereof) may be released. After thorough review, prepare to release responsive, nonexempt records or portions of records. To ensure openness, transparency, consistency, and the appropriate application of FOIA exemptions, all records released or being withheld in response to a FOIA request must be reviewed by the OIG FOIA Officer or the individual assigned to process the request, and the signing official with initial

determination authority. This paragraph also applies to anyone assigned by OC to process a FOIA.

- n. For hard copy responses, ensure redacted information cannot be read through photocopied records. For electronic responses, remove “hidden” metadata as appropriate. Annotate records with applicable FOIA exemptions at the location of the redacted information, excepting that the determination letter may also describe the redacted information and FOIA exemptions, so long as the letter clearly references specific types of redactions and the corresponding FOIA exemptions.
- o. Prepare the initial determination letter or direct the assignee to prepare the letter. All response letters must include: (1) the FOIA tracking number; and (2) appeal language, as appropriate.
- p. Obtain approval from an OIG employee with initial determination authority (signing official) to release or withhold records. See the Initial Determination Authority section below.
- q. Provide responsive information to the FOIA requester by uploading the response letter, responsive records (and invoice, if applicable) to FOIAonline, unless the requester has requested the response via regular mail. The redacted version of the responsive records will be stored in FOIAonline, unless the records are subject to special handling requirements. The original version will be stored in a system accessible only by OIG employees.
- r. Enter data as required in FOIAonline, and close requests in FOIAonline.
- s. Coordinate and communicate with FOIA offices at EPA headquarters and in field locations.

2.2 OFFICE OF COUNSEL. The OC provides legal advice, supervision and overall direction on all applicable legal standards for FOIA disclosure and other requirements. OC will review all requests for legal sufficiency and consistency and assign responsive records for processing.

In addition, OC will designate an attorney to prepare responses to any appeals of initial determinations. Responses to appeals will be signed by the Counsel to the Inspector General. See 40 CFR 2.104(j)(2).

As provided by EPA CIO 2151-P-08.0, the OIG also makes final determinations on Privacy Act requests for records under the jurisdiction of the OIG, and final decisions on Privacy Act appeals are also made by the Counsel to the Inspector General.

OC will assist DOJ if any FOIA determination results in litigation; and will consult and coordinate with other EPA components, as necessary, on any disclosure issues.

- 2.3 ASSISTANT INSPECTORS GENERAL, CHIEF OF STAFF and COUNSEL TO THE INSPECTOR GENERAL. Upon receiving a request for responsive records from the OIG FOIA Officer, the Assistant Inspector General (AIG), Chief of Staff, Immediate Office, Counsel to the Inspector General, or designee, will direct that a comprehensive and thorough search be made for responsive records that include hard copy and electronic files. Within five (5) business days, the AIG, Chief of Staff, Immediate Office, or Counsel to the Inspector General will identify and forward in electronic format (if practicable) all responsive records to the OIG FOIA Officer.

The office that generated the record is responsible for providing the record in an electronic format. If meeting the deadline or requirement for the electronic format is not possible, the AIG, Chief of Staff, Immediate Office, Counsel to the Inspector General or designee will inform the OIG FOIA Officer about the reason for the delay or the inability to provide electronic records. The AIG, Chief of Staff, Immediate Office, Counsel to the Inspector General or designee will then provide the OIG FOIA Officer with a revised date for responding, seek an exception to the requirement for producing electronic records, or seek an alternate solution from the OIG FOIA Officer. In addition, the AIG, Immediate Office, Chief of Staff, Counsel to the Inspector General, or their respective designee, will provide a certification that describes the extent of the search conducted.

- 2.4 INITIAL DETERMINATION AUTHORITY. At the discretion of the Inspector General, authority for initial FOIA determinations may be delegated in writing to any AIG, the Chief of Staff, or Counsel to the Inspector General. Such delegation may be re-delegated to an OIG employee occupying a position no lower than a division director or equivalent. This signing official functions to issue initial determinations to release or withhold records in response to FOIA requests.
- 2.5 ALL EMPLOYEES. Regardless of position, all OIG employees are responsible for being familiar with FOIA and Privacy Act requirements, since these laws apply to records created in the daily work that employees perform. If any employee receives a FOIA or Privacy Act request, or other request for OIG documents, the employee must immediately notify the OIG FOIA Officer and transmit a copy of the request to the OIG FOIA Officer.

Any OIG employee who receives an inquiry about an existing FOIA request must refer the requester to the OIG FOIA Officer; provide the requester with appropriate contact information for the OIG FOIA Officer, if requested; and immediately notify the OIG FOIA Officer about the inquiry. Only the OIG FOIA Officer, or designee,

is authorized to provide information about a FOIA request to a requester, including any federal employee who has made a FOIA request in a personal capacity.

SECTION 3. PROCEDURES

- 3.1 PROCESSING REQUESTS—GENERAL. The OIG will provide the requester with an initial determination to release or withhold records within 20 working days of the OIG's receipt of a FOIA or Privacy Act request, unless the time period for processing the request has been extended. The status of FOIA requests will be available on the EPA website <http://foiaonline.regulations.gov>.
- a. Requests for information not readily available. If a record cannot be easily located or retrieved, the OIG FOIA Officer may notify the requester about the delay (by telephone or in writing), and may provide a projected date range or timeframe the OIG expects to send a response, and/or request clarification of the request. The OIG FOIA Officer will record this information in the OIG's FOIA electronic file and/or FOIAonline.
 - b. Requests that do not reasonably describe the records requested. If the requester has not reasonably described the records requested, the OIG FOIA Officer will contact the requester for clarification, and to narrow overly broad requests. The OIG FOIA Officer will confirm any clarifications or modifications in writing. If the OIG FOIA Officer makes a request for clarification in writing, the request will include a time by which the requester must respond, as well as inform the requester that the request will be closed if no response is received by the specified date. If the requester does not respond within the timeframe provided, the request may be closed administratively. The OIG FOIA Officer will record this information in the OIG's FOIA electronic file and/or FOIAonline.
 - c. Administrative closure of a FOIA request when there is no response to a "still-interested" inquiry. The OIG may administratively close a FOIA request if the requester does not respond, after a period of time that OIG deems appropriate in the circumstances of a given case, to an inquiry asking whether the requester is still interested in receiving a response. The OIG will follow applicable DOJ guidance for the administrative closure of a FOIA request.
 - d. "E" FOIA. FOIA responses will be posted to the agency's FOIA management and tracking system, unless posting the records will create a potential harm protected by a FOIA exemption or a waiver to post records is granted by the Agency FOIA Officer. FOIA responses posted to FOIAonline are publicly accessible (except for first-party requests processed under the Privacy Act). FOIA responses posted to FOIAonline also satisfy the OIG's responsibilities under the Electronic FOIA amendments of 1996 (5 USC § 552(a)(2)(D)) to post records for public access

that have been the subject of, or are likely to be the subject of, two or more additional requests.

- 3.2 AUDIT AND EVALUATION REPORTS—PUBLIC ISSUANCE AND WEB POSTING. Pursuant to Section 8M of the Inspector General Act, all final publicly releasable audit and evaluation reports (or portions thereof) must be posted to the OIG's public website, unless there is a legal or policy prohibition against such posting. In all cases where audit and program evaluation managers believe a report, or a portion of a report, should not be posted to the Internet, or otherwise made publicly available, the managers must consult with OC. The Inspector General, or the relevant designee, will make the final determination.
- 3.3 REQUESTS FOR AUDIT AND EVALUATION REPORTS AND MATERIALS. Employees who gather audit and evaluation materials in response to a FOIA request will alert the OIG FOIA Officer whenever any information appears to be exempt from disclosure under FOIA or the Privacy Act.
- a. Final Audit and Evaluation Reports. Reports that are posted in full on the OIG website are publicly available and therefore may not be subject to FOIA. When a public OIG report satisfies a requester's FOIA inquiry, the requester will be directed to the OIG Internet page to view/download the report. If requested, the OIG will provide a hard copy of the requested report. If a report or portion of a report is not posted on the Internet, the report will be processed under FOIA.
 - b. Contract Audit Reports. The OIG is responsible for responding to requests for contract audit reports generated by or for the OIG. Before making a disclosure determination, the OIG FOIA Officer will coordinate with the EPA's Office of Administration and Resources Management, Office of Acquisition Management, to identify information that may be exempt from disclosure (e.g., confidential business information or pre-decisional information such as pre-award audits).
 - c. Draft Audit and Evaluation Reports. After issuance of a final report, the OIG generally will release draft audit and evaluation reports (including those portions of the draft that differ from the final version) in response to a FOIA request. The OIG will only withhold drafts or portions of drafts when foreseeable harm will result from disclosure, or when the OIG identifies a specific government interest or privilege that should be maintained. Prior to issuing a final report, the OIG generally will not release draft reports because the deliberative process is ongoing until the report is finalized.
 - d. Requests for Other Audit or Evaluation Materials. Requests for other audit or evaluation materials, such as OIG work papers, will be processed to provide the requester with the most information possible. Names of employees will normally

be released unless: (1) the employee's name will not shed light on the "workings of the government" (this generally refers to support staff); or (2) the employee (or the employee's family) may be subject to annoyance or harassment in their private lives as a result of releasing their names. Records created outside the OIG (e.g., records from the EPA or other agencies) will be referred to that agency or component for their direct response. The OIG will only withhold from disclosure audit or evaluation materials when foreseeable harm will result from disclosure, or when the OIG identifies a specific government interest or privilege that should be maintained.

3.4 REQUESTS FOR INVESTIGATIVE MATERIALS.

- a. Open Inquiries or Investigations. Requests for materials pertaining to open inquiries or investigations will generally be denied, using appropriate FOIA exclusions or exemptions. When no OIG or government acknowledgment of an investigation has occurred, and privacy interests, national security, statutory bar [exemption b(3)] or potential circumvention of the law are at stake, the OIG should consider giving a "Glomar" response, as follows:

Accordingly, OIG can neither confirm nor deny the existence of responsive investigative records pursuant to Exemption (7)(C) of the FOIA, 5 U.S.C. § 552(b)(7)(C). This response should not be taken as an indication that such records exist; rather, it is our standard response to requesters seeking information or records pertaining to third parties...

This type of response should be considered for third-party requests about individuals, including when there are no responsive records. If a "Glomar" response is not appropriate for open investigations, the OIG may invoke FOIA exemption (b)(7)(A) or other appropriate FOIA and/or Privacy Act exemptions.

For requests concerning an open investigation that involves a possible violation of criminal law, and there is reason to believe that the subject is not aware of its pendency and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may treat the records as not subject to the FOIA. This is applicable under the FOIA (c)(1) exclusion.

- b. Closed Inquiries or Investigations. First-party requests are requests from individuals seeking information about themselves. First-party requests are processed under both the Privacy Act and FOIA. The OIG will respond to the request, and apply appropriate FOIA and Privacy Act exemptions as warranted. A

Privacy Act certification must be received before documents will be released to a first-party requester.

Third-party requests for materials pertaining to closed inquiries or investigations (i.e., cases for which all criminal, civil and administrative actions have been completed) regarding other individuals will be processed under the FOIA, applying appropriate exemptions as warranted. It is OIG policy to neither confirm nor deny the existence of responsive records (the “Glomar” response) in response to requests for investigative records related to named individuals. This is done to protect the privacy of persons who were witnesses or the subject of investigations.

If, however, a Glomar response is not appropriate because the existence of an investigation has been publicly acknowledged by the OIG or DOJ, or because the results of the investigation resulted in public action (e.g., a guilty plea or a conviction), the OIG will respond to the request and apply appropriate FOIA exemption(s). Special attention will be paid to protect the privacy of special agents and witnesses, as well as the privacy of subjects of investigations in which no action was taken or allegations were not proven, to the extent permitted by FOIA and/or the Privacy Act, and pertinent court decisions.

3.5 RESPONDING TO MEDIA REQUESTS. Any news media requests for documents will be handled under FOIA (with applicable fee exemptions), unless the request is for an OIG document that has been previously publicly disclosed. Any other requests (e.g., requests for information or comment) must be referred to OIG’s Office of Congressional and Public Affairs (OCPA). See OIG Policy 604.

- a. Coordination with OCPA. The OIG FOIA Officer and/or Deputy Counsel will coordinate with OCPA’s Deputy Assistant Inspector General for Congressional and Public Affairs.
- b. Media Inquiries about Investigations. Any news media requests for documents pertaining to open inquiries or investigations shall be handled under Section 3.4a. above. All other types of media inquiries (e.g., solicitation for comment) relating to an investigation shall be handled in accordance with OIG Policy 604.

3.6 RESPONDING TO CONGRESSIONAL REQUESTS. There are generally two types of Congressional requests: (1) requests from an individual member of Congress or on behalf of an individual member; or (2) duly authorized requests from the Congress. In all cases, OC and OCPA will coordinate responses. See OIG Policy 605.

- a. Requests from Individual Members of Congress. A request from a member of Congress is one that is made in that member’s individual capacity. The request may be made on behalf of a constituent. Also included are requests from the Congressional Research Service. Any such request is treated as a FOIA request.

- b. Requests from Congress. A request from Congress is a written request signed by the Speaker of the House, President of the Senate, or the chair or ranking member of a committee or subcommittee concerning matters within their respective jurisdictions. Such requests are not processed as FOIA requests but may be subject to Privacy Act restrictions on further release. All such requests shall be forwarded immediately to OCPA for appropriate handling.
- 3.7 READING ROOM. FOIA requires that agencies have a “reading room” to inspect publicly available documents. The Web page for EPA OIG, available at <http://www.epa.gov/oig/reports.html>, serves this purpose. The final audit and evaluation reports described in Section 3.3a above are generally available through this Web page.

As described in Section 3.1d above, records processed by the OIG under the FOIA are generally maintained on the FOIAonline system, which also serves the purpose of a reading room for records releasable to the public.